



## CITY COUNCIL AGENDA REPORT

### City of Anaheim OFFICE OF CITY ATTORNEY

**DATE:** APRIL 26, 2022  
**FROM:** OFFICE OF THE CITY ATTORNEY  
**SUBJECT:** SETTLEMENT OF HOUSING AND COMMUNITY  
DEVELOPMENT AND CALIFORNIA ATTORNEY GENERAL  
CHALLENGE TO ANGEL STADIUM TRANSACTION  
**ATTACHMENT (Y/N):** YES **ITEM #** 01

#### **RECOMMENDATION:**

That the City Council, by Motion, approve settlement (the "Settlement") (by way of a Stipulated Judgment in Orange County Superior Court) with the California Housing and Development Department (HCD) and the California Attorney General regarding HCD's Notice of Violation dated December 8, 2021, alleging that the City's sale of Angel Stadium to SRB Management, LLC (SRB) violated the Surplus Land Act (SLA), on the following basic terms: (1) the City to create a local housing trust that would be funded by 30% of the Angel Stadium purchase price (approximately \$96,000,000) and would be used to fund low, very-low, and extremely-low affordable housing units in Anaheim; (2) the City would ensure at least \$27,700,000 worth of low and very-low affordable housing would be built on the Stadium project site, and would make efforts in conjunction with HCD to seek funding for up to 466 units on-site, subject to the City's discretionary authority and SRB's consent; (3) the City would not admit liability under the SLA; and (4) HCD and the California Attorney General would cease from further enforcement of the SLA as to the Stadium sale.

[Terms (1) and (2) above are subject to future public review and legislative action by the City, including without limitation, the creation of a housing trust and amendments to the Development Agreement (DA) and Purchase and Sale Agreement with SRB to effectuate certain terms of the settlement. The City is neither creating the housing trust nor amending the DA or Purchase and Sale Agreement by approving this Settlement.

Although the City Council could approve this Settlement in closed session for anticipated litigation under the Brown Act, the City Attorney's Office has recommended that the approval of the settlement be done in open session as a precaution and in the spirit of transparency. The City Council has not approved this settlement in closed session.]

#### **DISCUSSION:**

##### 1. Angel Stadium Transaction

The Purchase and Sale Agreement for Angel Stadium was approved by Council on December 20, 2019. Prior to that time, the City Attorney's Office worked closely with

outside counsel and attorneys for the Angels in determining all of the legal requirements associated with the sale and disposition of the property.

One of the issues considered was the application of the SLA and its relation to the Economic Opportunity Statute, each of which provides an avenue of the sale of public lands. The sale moved forward as an Economic Opportunity Sale under Government Code Section 52201, requiring a commissioned economic report, a public hearing, and two weeks' notice to the public. Under the Economic Opportunity statute, the legislature made clear that "the section [is] an alternative to any other authority granted by law to cities to dispose of city-owned property."

Because of the nature of this sale as an economic opportunity, the fact that the land would likely be deemed SLA-exempted, the fact that the Angels controlled the property through at least 2038 thus making negotiations with affordable land developers impractical, and the fact that the project would yield the SLA's minimum threshold of 15% affordable housing, the City appeared to be on solid ground to move forward with the transaction.

In the succeeding months after the approval of the December 2019 Purchase Agreement, HCD did not assert that the City was not in compliance with the SLA. Thus, ten months later, and according to the plan laid out before the Council when it approved the PSA in 2019, the Council had another public hearing and approved the Development Agreement (DA), the Commitment Agreement, the Lease Assignment, and an Amended PSA on September 29, 2020, with final approval of the DA on October 6, 2020.

## 2. HCD's Inquiry

It was not until after the final approval of the DA that HCD first reached out to City staff to request information about that transaction. The City provided HCD with all requested information and engaged in several Zoom conferences to respond to HCD's inquiry. However, the nature of the HCD's intentions were not made clear to City staff, other than HCD staff wanted to receive information about the transaction and the nature of the relationship between SRB and the City.

On April 28, 2021 the City received a letter from HCD referenced as a "preliminary determination" that the City "may" be in violation of the SLA. The City prepared a response to the preliminary determination and submitted it to HCD on June 14, 2021.

After that time, the City, SRB, and HCD, represented by the Attorney General's Office, met frequently, first to discuss the parties' respective legal positions, and also to discuss a potential settlement of the parties' disputes.

In addition to providing information and documentation to help HCD better understand the proposed transaction, the City and SRB, at HCD's urging, presented a proposal, subject to City Council approval, to increase the amount of affordable housing from 777

to 1,295 affordable units, which would equate to increasing the affordable set aside from 15% to 25% of the total Project.

The City and SRB also discussed providing 518 low and very low income units on an accelerated basis (within 10 years instead of 25 years as contemplated by the pending transaction) if HCD would agree that those units can be provided or developed on infill sites nearby to the Angel Stadium Property. The proposal to accelerate the delivery of low and very low income units off-site was intended to reflect the fact that such units might be delivered more quickly through the construction of new buildings on nearby infill sites that are supported by existing infrastructure, and that would not necessitate the construction of replacement stadium parking. The effort to accelerate also goes beyond the requirements of the SLA, which contains no requirement that housing actually be disposed surplus land or that it be developed on any schedule.

Although HCD initially received these proposals to increase the affordable housing commitment favorably, HCD formally rejected these offers on December 2, 2021. On December 8, 2021, HCD issued a Notice of Violation. The City Attorney submitted the City's response to the Notice of Violation on February 4, 2022.

Several additional settlement discussions ensued between the City Attorney's Office and the Attorney General's Office, culminating in this proposed settlement. The City Council was kept abreast of the progress of settlement negotiations through multiple closed session briefings on December 7, 2021, January 11, 2022, February 1, 2022, and April 12, 2022. In addition, the City Attorney consistently consulted with SRB regarding the potential terms of the settlement, and how they may impact the Angel Stadium transaction.

### **Proposed Settlement**

Under the proposed settlement (1) the City would create a local housing trust that would be funded by 30% of the purchase price (specifically \$95,943,653.70); (2) the City would ensure that \$27,734,189 worth of low and very-low affordable housing would be built on the Stadium project site, and would make efforts to seek funding for up to 466 units on-site, subject to the City's discretionary authority and SRB's consent; (3) the City would not admit liability under the SLA; and (4) HCD and the California Attorney General would cease from further enforcement of the SLA as to the Stadium sale.

The total amount of the investment in affordable housing through this settlement is reflective of the \$123,677,843 amount that was originally credited to SRB in the Stadium sales transaction for onsite affordable housing. The intent of the parties is that Stadium deal will be restructured such that approximately \$96M of the \$123M credit will instead fund the housing trust, while the balance of the credit will be used to fund affordable housing on the Stadium site. Those revisions are currently being negotiated between the City and SRB and will be reflected in proposed amendments to the Development Agreement and the Purchase Agreement that will be presented to the public and considered at future Planning Commission and/or City Council meetings in

the ensuing months. The City Council has not taken action to either create or fund the housing trust, or to amend the DA, and does not do so by approving this Settlement.

### **Housing Trust**

Consistent with the SLA, the City would have five years to commit and expend the housing trust funds to finance newly constructed housing units that are affordable to extremely low, very low, or low-income households within the City. After five years, any remaining funds yet to be disbursed would be deposited into the State Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund for the sole purpose of financing newly constructed housing units that are affordable to extremely low, very low, or low-income households located in the City. Per the proposed judgment, the Attorney General would monitor the City's disbursements, and the City would be subject to annual reporting requirements.

The actual manner in which the trust funds are administered would be subject to a future public discussion and vote by the Council. But it is anticipated that it will be structured in such a way so that the Council would have the ultimate discretionary authority on how the funds are expended.

### **Affordable Housing Commitment on Stadium Site**

To maximize the potential to develop the 466 very low and low-income units on-site, the City would be committing to working with HCD and state and local affordable housing partners in leveraging public and private programs—such as tax credits, affordable housing bonds, and grants—for affordable housing development on the Stadium project site. The City would also agree not to unreasonably withhold approval of any reasonable request by SRB Management LLC to provide low or very low income units financed in whole or part by tax credits or by state or federal funds, or to withhold approval for any benefit from any available “density bonus” or other development incentives within the City's control, provided that such request is allowed or authorized under law. Having said that, the City will still maintain its discretionary approval rights, consistent with state law, to any additional affordable housing proposals, and SRB would have to consent to any affordable housing beyond the \$27,700,000 invested on-site.

### **Stipulated Judgment as Settlement**

If approved, the Settlement would be implemented through a stipulated judgment to which the parties have tentatively agreed and would be signed by a judge of the Orange County Superior Court. As a practical matter, this means that the AG's Office would file a complaint against the City claiming an SLA violation, and would simultaneously file the stipulated judgment for Court signature. The Court would then have continuing jurisdiction to enforce the judgment, meaning that either party claiming that the other is not in compliance with the stipulated judgment could seek enforcement directly from the Court rather than having to file a complaint for breach of contract.

**City's Future Discretionary Acts**

By approving the settlement, the City would not be making, committing to or guaranteeing any legislative changes, approving any entitlements, or taking any other action requiring future public process. Rather, any legislative action contemplated in the stipulated judgment would be decided at future publicly noticed meetings – pursuant to the Brown Act and other standard procedures – and the public would retain any right to comment on any such legislative actions or entitlements, and the City Council would maintain its discretionary authority. Examples of such action items would be the creation of a City-controlled local housing trust, as well as amendments to the Development Agreement and the Purchase Agreement.

**IMPACT ON BUDGET:**

The stipulated judgment would be the first step in ensuring the funding of approximately \$96M into a housing trust for affordable housing in Anaheim. The remainder of the impact would be pending any future amended Purchase and Sale Agreement and Development Agreement with SRB.

Respectfully submitted,

Robert Fabela  
City Attorney

**Attachments:**

1. Notice of Violation, dated December 8, 2021, from California Housing and Development Department
2. City of Anaheim's response to Notice of Violation, dated February 4, 2022
3. Proposed Stipulated Judgment